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THE CUBAN QUESTION.

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THE President, in that part of his Message referring to the Cuban Question, says:

"The principle is maintained, however, that this nation is its own judge "when to accord the rights of belligerency, either to a people struggling to "free themselves from a government they believe to be oppressive, or to independent nations at war with each other."

This principle, though not in this instance very felicitously expressed, is undoubtedly correct; and, being so, of course every other nation is also clearly the sole judge of the propriety and opportunity of its action in similar cases; but then, what becomes of Mr. Sumner's argument against England, endorsed in substance by the President, which is based on what he is pleased to consider a *premature* recognition of the Southern Confederacy.

According to the principle maintained by the President, and which I hold to be true, we, in common with every other nation, have the *right* to acknowledge a belligerent *whenever we see fit*. The *status* of the several contending parties can, therefore, have nothing to do with the question; for, if as argued by Mr. Sumner, a belligerent must have acquired a certain *status* before he can be legally recognized as such, then the principle stated is not true; because a nation clearly cannot be said to be the sole judge of the *opportunity* of its action in the matter, if it be bound to consult the *status* of the belligerents before it acts. And, if a knowledge of that status be necessary to warrant action, how is it to be obtained? It is not, I presume, to be supposed that the information possessed by the Administration in regard to the present status of the Cuban rebellion, though derived from its official agents in the Island, can be any more exact than that which England and France obtained through their official agents in this country during the progress of our civil war; and, it is well known to every one who was in Europe at the time, that the universal opinion, based on official information, was, up to the very eve of Lee's surrender, that the North could not by any possibility succeed. As regards the Cuban struggle, there is at least one *fact* which stares us in the face, and which no official report can controvert; and that is, that the struggle, initiated by a people totally unprepared and unprovided with the means of resistance to a *purely military* government, has been prolonged for more than a year; that Spain, after reinforcing her already large army in Cuba with 40,000 men, and a large naval

[New York: 1897].

force, to furnish which would have been entirely beyond her power but for our pusillanimous connivance with her, has made no impression whatever upon the rebellion, which is absolutely stronger to-day in numbers, in material of war, and the extent of territory held, than it has been at any time since it commenced. And yet, this self-evident fact is, forsooth, to be placed in doubt, because the official government agents, who are not only subjected to the same potent influence of Spanish *diplomacy* which has been so effective here; who are absolutely unable to obtain any information, other than that to be derived at second hand from Spanish officials, notorious slave dealers, and foreign merchants (including unfortunately many Americans), whose interests are dependent upon the perpetuation of slavery; happen to give it as their opinion that the rebellion will undoubtedly be crushed, and *therefore* does not merit, I will not say our sympathy or co-operation, but not even the impartial observance of our neutrality laws.

The recognition of belligerent rights, especially in cases of rebellion of colonies or provinces, *no matter under what circumstances it may be granted*, cannot fail of being an unfriendly act towards one of the contending parties, and would always, *without regard to its opportunity*, be regarded as such, and made a "casus belli," when the aggrieved party felt itself strong enough to defend its rights.

Thus, for instance, if the Fenians were to rise in Ireland, take possession of all the chief cities and ports, establish a "defacto" government, fulfill all the requirements of international law, and we should thereupon recognize them as belligerents, England would, nevertheless, declare war against us, and it would be in vain that we should urge that we had only exercised our undoubted right. In acknowledging the belligerent rights of the confederacy, England was fully justified by the very principle maintained by the President, and cannot, on any legal grounds, be held responsible except for the material damages arising from the breach of that *neutrality* which she was bound to observe.

True, it was an unfriendly act, but it would have been equally so at any time and under any circumstances. But what right had we to expect friendship from England? Had she not many old grudges to pay? Was it not for her interest to break up our Union, and to do all in her power to weaken and destroy her most dreaded rival? To look for *friendship* from England under such circumstances, was strangely to ignore the motives by which both individuals and nations are governed. Had it been in our power we should undoubtedly have made her action a "casus belli." That we did not do so at the time, was possibly *good policy*, but it by no means adds to our reputation as a nation, jealous of its rights and resolved to maintain them at all hazards. In this respect we compare very unfavorably with Spain, who, in the midst of a revolution at home, and of a formidable revolt in her principal Colony, boldly

declares than an acknowledgment of Cuban belligerency would at once lead to a declaration of war; and the antecedents of Spain's history warrant the belief that such would really be the case, for no nation has ever carried to such an extreme, the disregard of expediency, and that chivalric spirit, which we are pleased to call "quixotism," but which, after all, is the only basis of true nobility, either individual or national. Where *mere expediency* becomes the rule, all question of *right, honor and justice*, must be abandoned.

The truth is, that the so-called international law, is merely a series of precedents established by force, the validity of which depends entirely upon the relative strength of the several members of the community of nations; they are always interpreted according to the caprice, or the interest of the stronger party, and have all been repeatedly infringed at the call of expediency, or at the will of the superior force.

Not to go too far back for proof of this assertion, I will merely hint at the action of Great Britain and the United States in regard to the former Colonies of Spain in America; of all Europe and America in regard to Greece, and pass on to much more recent events. Only some six or seven years ago, the Kingdom of the Two Sicilies was one of the sovereign nations of the world. Though its subjects were the victims of the most terrible tyranny, they were evidently entirely incapable of emancipating themselves without foreign aid, and the country apparently enjoyed profound peace. In the language of despots "order prevailed" throughout the realm.

Suddenly a revolution, notoriously instigated by foreign emissaries, broke out, which, if left to itself, would soon have succumbed to the power of the government; but which, through the assistance of an expedition from Genoa, under the command of Garibaldi (in reality fitted out with the connivance of the Sardinian Government, though it made a show of an endeavor to prevent it) became in a few weeks triumphant, and the Two Sicilies were made an integral part of the Kingdom of Italy. The tyranny under which that people had suffered bore no comparison to that to which the natives of Cuba have been subjected. The Sicilian rebels could not have maintained for a single week without foreign aid, that struggle which the Cubans unaided, have maintained for more than a year. They held no cities or ports, but they had neighbors whom a just appreciation of the blessings of liberty, or, it may well be, a true sense of expediency and of their own interest, made willing to aid them to attain that liberty. No matter what, however, may have been the motives of the Sardinian sympathisers, their action was a plain and wanton infraction of international law, and yet the *result* has been acknowledged by all Europe and the United States, and universally hailed as a forward step towards the emancipation of the world. It is to be noted, however, that Sardinia had for Secretary of State a Count de Cavour, who moulded even a Napoleon to his will as

he would a child; while we, alas! have a man, no doubt honorable in the extreme, but who has been less careful of his honor than was Cæsar of his wife's reputation, and strangely wanting in that delicate perception of the dignity of his office which should have led him to perceive the impropriety, to say the least of it, of allowing a near relative to act as the extravagantly paid advocate of a cause in which he was to act as judge.

Now if such things can happen, is it not, I ask, the height of absurdity to argue the validity and the obligation of what is called international law? If the community of nations, the only tribunal which could enforce its execution, or any member thereof strong enough to do its will, is at liberty to interpret that law, and to sanction or punish its infringement, according to its caprice, to the dictates of expediency, or of its own interest, and is not bound to enforce it according to its spirit and its letter; international law is but a farce, another of the many forms which *force* assumes to tyrannize and enslave mankind.

Every step in the progress of human liberty has been taken in direct contravention of pre-existing international law, and, indeed, progress would be altogether impossible if its precepts were always to be blindly obeyed. But international law being as it is, the mere arbitrary dictate of superior force, whatever may be its validity, it assuredly cannot be greater than that of the constitution and laws to which, as a nation, we have *voluntarily* submitted ourselves; and it is certainly a curious phenomenon to find such a man as Mr. Sumner, boasting of his strict adherence to international law, and urging the necessity of its observance, when he has been always one of the most strenuous advocates of that "higher law" which, where human liberty and the equality of mankind are concerned, is above *all* human laws, and should be obeyed *without regard to consequences*. There is apparently in Mr. Sumner's mind not only a difference between white and black, but between Spanish and American, and the whites and the Spanish are placed in the same category. The white American and Spanish negro, have apparently "no rights which he is bound to respect."

On the 2d inst., anniversary of the execution of John Brown, he delivered at the Plymouth Church, his lecture upon "Caste," the whole argument of which, by the way, is based upon the controlling supremacy of that *moral law* which is written in every man's soul; and he prefaced the lecture by an eulogy of the said Brown, holding him up as a hero and the martyr of a righteous cause; which I am not at all disposed to dispute. But, either John Brown was justly punished for an open and scandalous breach of his country's laws, or Mr. Sumner is not justified in excusing his connivance with Spain to perpetuate Slavery in Cuba, by an appeal to the exigences of international law. The cause is the same. The flowing of the Gulf stream between Cuba and the United States can make no difference in the principle. The color is the same,

and if John Brown was right, a hero and a martyr, Mr. Sumner is wrong, will certainly never be a hero, and evidently does not intend to be a martyr.

Mr. Sumner argues that the Cubans have not liberated their slaves, and that if they do so it will be only as a last resource to gain their own freedom. This in the first place is false; for whatever may have been the *wishes* of the Cubans, they from the first foresaw that the emancipation of the negro, must go hand in hand with their own, and in the second place, they have solemnly decreed that emancipation.

No one will have forgotten the indignation caused in this country by the fact that England, after having sacrificed her own colonies for the emancipation of the slaves, and who had spared no efforts to bring about emancipation in this country, should take sides with the South. But England said to us, as Mr. Sumner says to the Cubans, "You are fighting for empire—not for the 'freedom of the slave.'" And Mr. Sumner must not forget that such was the fact, as regards ourselves, for Mr. Lincoln was obliged to *justify* his proclamation of emancipation as a *war measure*; and, whatever Mr. Sumner's ideas on the subject may have been, the country, in reality, fought for the preservation of the Union, and not for the abolition of slavery. Whatever may have been the intentions of the Cubans, however, it was in the power of Mr. Sumner, by making the emancipation of their slaves a condition of recognition, to have secured the liberation of half a million of blacks, to say nothing of an equal number of whites, from the most galling tyranny the world has ever known.

But, for Mr. Sumner, there is a law still higher than the "higher law." Mr. Sumner made an absurd claim upon England, and, rather than acknowledge that he was wrong, slavery in Cuba, both of whites and blacks, may, for what he cares, be perpetuated "ad infinitum." He may, however, live long enough to discover that by sacrificing the eternal principles of justice to his own "amour propre," he has not less effectually damaged his well-earned fame as the friend of liberty, than he has prejudiced the permanent interests and true honor of his country.

But, whatever may be our obligations under *international law*, we are undoubtedly bound to fulfill *our own neutrality laws*. These laws, as originally enacted, obliged us to observe strict neutrality between belligerent *nations*. During the conflict between Spain and her former colonies, the law was so modified as to extend our neutral obligations to "*colonies and peoples*," and this was done at the instigation of Spain, to prevent our affording aid to her rebellious colonies. Now, if such modification was necessary in order to render such aid *illegal*, it is very clear that it was *legal before the modification*. If that modification made it illegal to give aid to the *rebellious colonies*, it made it equally so to give aid to *Spain*. To argue that the modification was intended to provide for cases in which a colony might be at war with a foreign

nation not its sovereign, is simply an absurdity, for no colony could be at war with a foreign country without creating a state of war between that country and its sovereign, in which case the neutrality law, as originally worded, was amply sufficient. Equally absurd is it to argue that the "peoples" mentioned in the modification means peoples acknowledged as such by other nations, or ourselves—for the original law fully covered the case of peoples already acknowledged.

There is no getting rid of the fact that the modifications in the neutrality law, made in 1818, were made to provide for cases exactly similar, in every respect, to that presented by the revolution in Cuba. Those modifications bound us then to strict neutrality between Spain and her colonies, and they bind us now; and the release of the Spanish Gunboats is a clear infraction of our own neutrality laws, and a disgrace to our country.

Our reward will be, that Spain will boast that a mere threat of war has forced us to consent to an infraction of our own laws; and England will reply to our claims, that her action was not only justified on the principle maintained by the President, but that, in our eagerness to prove that she was wrong, we have overshot the mark, and, through motives of expediency, allowed our neutrality laws to be infringed—not by individuals, but by the Executive itself.

While it is, without doubt, exclusively the province of the *legislative and executive* branches of the Government to decide when to acknowledge belligerency, it is no less exclusively the province of the *judicial* branch to *interpret* the laws. The question at issue, in the present instance, is not so much whether we ought to acknowledge Cuban belligerency, as *whether we are bound by the modifications of 1818 to observe strict neutrality between Spain and her colony, notwithstanding that we have not acknowledged the belligerency of the latter*. If the modification of 1818 does not impose this obligation of neutrality *previous* to acknowledgment, it was, as I have already shown, both unnecessary and absurd, for acknowledgment could not fail to bring with it the neutral obligation, and the original law fully covered every case of acknowledged belligerency. The assumption by the Executive of a right to *interpret* the law, is a plain and dangerous usurpation of the exclusive functions of the judiciary; and it is amusing to find the Democratic organ of the Spanish Minister, in one editorial accusing Congress of a design to deprive the Supreme Court of its undoubted right of interpreting the Constitution and the laws, and in another applauding the Executive for actually doing the very same thing.

In conclusion, I would observe that it is not only the liberty of *Cuba* that is imperilled by the inexplicable course of the Administration. If the Executive can, with impunity, assume judicial functions, and not only determine

"per se et ante se," under pretext of the necessities of *State policy*, what are and what are not infractions of the law, but dictate to the competent judicial authority what complaints of infractions they shall entertain, and what they shall not, I say *that our own liberties are not only in danger, but that they are already practically destroyed.*

An old English writer says, most truly: "He that would usurp an absolute lordship and tyranny over any people, need not put himself to the trouble and difficulty of abrogating and annulling the laws made to maintain the common liberty; for he may frustrate their intent, and compass his own design as well, if he can get the power and authority to interpret them as he pleases, and add to them what he pleases, and to have his interpretations stand as laws; if he can rule his people by his laws, and his laws by his lawyers."

Greatly does it behoove us all, fellow-citizens, to bear these words in mind, and to take heed lest, by acquiescing, without protest, in Executive usurpation, because it merely affects the rights and liberties of our neighbors, we be not, in reality, consenting to a precedent which may warrant the destruction of our own.

NEW YORK, December 15, 1869.

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